

In the ORS 656.260 Managed Care Dispute of

LANCE L. BOWLING, Claimant

Contested Case No: H05-090

ORDER REMANDING

February 28, 2006

LANCE L. BOWLING, Petitioner

SAIF CORP., Respondent

Before John Shilts , Administrator, Workers' Compensation Division

Petitioner claimant, through his attorney Christine Jensen, timely filed exceptions to Office of Administrative Hearings Administrative Law Judge (ALJ) Catherine P. Coburn's September 12, 2005 Proposed and Final Order. Respondent insurer, through its attorney Jerome P. Larkin, responded. This matter comes before the director for a final order. The issue is timeliness of claimant's request for administrative review. I reverse and remand to MRU.

I adopt the ALJ's findings of fact with one correction. Finding of fact (1) states that insurer accepted a C6-6 disc herniation. Insurer accepted a C6-7 disc herniation, and the finding is modified to correct this clerical error.

The underlying issue is insurer's liability for physical therapy provided by Rebound Physical Therapy between November 4, 2003 and November 20, 2003. The Medical Review Unit (MRU), by Administrative Order of Dismissal dated June 9, 2005, found that claimant did not timely submit his request for administrative review and dismissed it. MRU reasoned that claimant did not submit his request within 90 days of the date he knew or should have known there was a dispute over the provision of medical services, as required by OAR 436-009-0008(2)(b).¹ The ALJ affirmed.

Claimant argues that, under ORS 656.704(3)(b)(C)² and OAR 436-009-0008(2)(d), he correctly requested a hearing before the Hearings Division of the Workers' Compensation Board on insurer's denial of his new injury claim before requesting review of the billing dispute by the director. Claimant contends he timely requested review within 90 days of the date the board's ALJ issued an Opinion and Order. Prior to that date, according to claimant, the director lacked jurisdiction over the issue and it would have been pointless to have requested review. Claimant argues his timely request to the Hearings Division should not preclude him from now requesting review by the director.

Insurer argues the director retained jurisdiction over whether the disputed services were related to claimant's original injury. Further, according to insurer, OAR 436-009-0008(2)(d)

¹ The relevant rules are discussed further below.

² ORS 656.704(3)(b)(C) provides,

“(b) The respective authority of the board and the director to resolve medical service disputes, other than disputes arising under ORS 656.260, shall be determined according to the following principles:

* * * * *

“(C) Any dispute that requires a determination of whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability is a matter concerning a claim.”

does not create an exception to the timeframe provided in subsection (2)(b) of the rule, and claimant's request for review was untimely.

OAR 436-009-0008(2) as effective on June 9, 2005,³ the date of MRU's order, provided:

“(2) The medical provider, injured worker, or insurer may request review by the director in the event of a dispute about either the amount of a fee or non-payment of bills for medical services on a compensable injury. The following time frames and conditions apply to requests for administrative review before the director under this rule:

“(a) For all MCO enrolled claims where a party disagrees with an action or decision of the MCO, * * *.

“* * * * *

“(b) For all claims not enrolled in an MCO, or **for disputes which do not involve an action or decision of the MCO**, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. * * *

“* * * * *

“(d) When there is a formal denial of the underlying condition or a denial of the causal relationship between the medical service and the accepted condition, the issue must first be decided by the Hearings Division of the Workers' Compensation Board.”

(Emphasis added.)

Under the terms of this rule, I agree that a worker has 90 days in which to request review of a billing dispute by the director, even if there is also a compensability dispute within the jurisdiction of the board. Subsection (2)(d) of the rule does not create an exception to the time frame provided in subsection (2)(b). However, this version of the rule does not apply to this matter. OAR 436-009-0003(1) provides, “These rules apply to all services rendered on or after

³ Adopted by WCD Admin. Order 05-051, effective April 1, 2005.

the effective date of these rules.” The services at dispute in this case were rendered in November, 2003. Therefore, the version of the rule in effect on that date apply.

OAR 436-009-0008(2) as effective in November, 2003⁴ provides:

“(2) The medical provider, injured worker, or insurer may request review by the director in the event of a dispute about either the amount of a fee or non-payment of bills for medical services on a compensable injury. The following time frames and conditions apply to requests for administrative review before the director under this rule:

“(a) **For all MCO enrolled claims**, the aggrieved party shall first apply to the MCO for dispute resolution within 30 days pursuant to OAR 436-015-0110. Administrative review by the director must be requested within 60 days of receipt of the MCO’s final decision under the MCO’s dispute resolution process. If a party has been denied access to the MCO dispute process or the process has not been completed for reasons beyond a party’s control, the party may request director review within 60 days of the failure of the MCO process.

“(b) For all claims not enrolled in an MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due pursuant to OAR 436-009-0030. Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR chapter 438, division 005.

“* * * * *

“(d) When there is a formal denial of the underlying condition or a denial of the causal relationship between the medical service and the accepted condition, the issue must first be decided by the Hearings Division of the Workers’ Compensation Board.”

(Emphasis added.)

⁴ Adopted by WCD Admin. Order 03-055, effective July 1, 2003.

The introductory sentence to section (2) is the same in the 2003 version and the 2005 version of the rule. Claimant is disputing insurer's denial of payment for physical therapy, so section (2) applies. In 2003, subsection (2)(a) applied to "all MCO enrolled claims." Claimant is enrolled in an MCO. However, subsection (2)(a) is not helpful in determining when claimant should have submitted his request for review. Insurer's denial of payment for physical therapy would not have involved the MCO's dispute resolution process, so there would be no MCO decision or failure of the MCO's process from which claimant's time frame for requesting review would begin. Subsection (2)(b) is likewise not helpful, because it applied to "all claims not enrolled in an MCO"; claimant was enrolled in an MCO. There is no other timeframe in section (2) that controlled the timeliness of claimant's request for review.

Subsequent changes to OAR 436-009-0008(2)(a) and (b) clarified that for disputes involving claims enrolled in an MCO but not involving an action or decision of the MCO, such as the dispute here, the timeframes in OAR 436-009-0008(2)(b) apply. However, the rule in effect on the date of the services in dispute did not so provide. Claimant's request for review, therefore, was not untimely under OAR 436-009-0008(2) as effective in November, 2003. Accordingly, this matter is remanded to MRU for a determination on the merits.

IT IS SO ORDERED.